

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jeffrey Tsui	Team: Squad #15	CCRB Case #: 202001998	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday 02/25/2020 7:45 PM	18 Mo. SOL 08-25-2021	EO SOL 04-11-2022	Location of Incident: [REDACTED] East 94th Street Brooklyn, NY 11212		Precinct: 67
Date/Time CV Reported Thu, 02/27/2020 8:59 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 03/10/2020 10:01 AM		

Complainant/Victim	Type	Home Address
1. L [REDACTED] C [REDACTED]	Comp/Victim	[REDACTED] Bruce Lane Brentwood NY 11717
2. D [REDACTED] B [REDACTED] C [REDACTED]	Victim	[REDACTED] East 94th Street Apt 3J Brooklyn NY 11212

Subject Officer(s)	Shield	TaxID	Command
1. POM S [REDACTED] R [REDACTED]	[REDACTED]	[REDACTED]	INT CIS
2. SGT D [REDACTED] G [REDACTED]	[REDACTED]	[REDACTED]	CRM CTL
3. POM Joseph Bautista	00113	954534	INT CIS

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 B [REDACTED] B [REDACTED]	[REDACTED]	[REDACTED]	INT CIS
2. DT3 H [REDACTED] C [REDACTED]	[REDACTED]	[REDACTED]	INT CIS
3. DT3 J [REDACTED] D [REDACTED]	[REDACTED]	[REDACTED]	INT CIS

Officer(s)	Allegation	Investigator Recommendation
A . POM S [REDACTED] R [REDACTED]	Abuse of Authority: Police Officer S [REDACTED] R [REDACTED] stopped L [REDACTED] C [REDACTED]	A . Exonerated
B . POM S [REDACTED] R [REDACTED]	Abuse of Authority: Police Officer S [REDACTED] R [REDACTED] stopped D [REDACTED] B [REDACTED] C [REDACTED]	B . Exonerated
C . POM S [REDACTED] R [REDACTED]	Discourtesy: Police Officer S [REDACTED] R [REDACTED] spoke discourteously to L [REDACTED] C [REDACTED]	C . Unsubstantiated
D . POM S [REDACTED] R [REDACTED]	Abuse of Authority: Police Officer S [REDACTED] R [REDACTED] searched the vehicle in which L [REDACTED] C [REDACTED] was an occupant.	D . Exonerated
E . POM Joseph Bautista	Abuse of Authority: Police Officer Joseph Bautista searched the vehicle in which L [REDACTED] C [REDACTED] was an occupant.	E . Exonerated
F . SGT D [REDACTED] G [REDACTED]	Abuse of Authority: Sergeant D [REDACTED] G [REDACTED] threatened L [REDACTED] C [REDACTED] with the use of force.	F . Substantiated
G . POM Joseph Bautista	Abuse of Authority: Police Officer Joseph Bautista seized L [REDACTED] C [REDACTED]'s property.	G . Exonerated
H . POM S [REDACTED] R [REDACTED]	Abuse of Authority: Police Officer S [REDACTED] R [REDACTED] searched the vehicle in which L [REDACTED] C [REDACTED] was an occupant.	H . Exonerated
I . POM Joseph Bautista	Abuse of Authority: Police Officer Joseph Bautista searched the vehicle in which L [REDACTED] C [REDACTED] was an occupant.	I . Exonerated
J . SGT D [REDACTED] G [REDACTED]	Discourtesy: Sergeant D [REDACTED] G [REDACTED] spoke discourteously to L [REDACTED] C [REDACTED]	J . Unsubstantiated
K . SGT D [REDACTED] G [REDACTED]	Discourtesy: Sergeant D [REDACTED] G [REDACTED] spoke discourteously to D [REDACTED] B [REDACTED] C [REDACTED]	K . Unsubstantiated
L . POM S [REDACTED] R [REDACTED]	Abuse of Authority: Police Officer S [REDACTED] R [REDACTED] threatened to notify Administration for Children's Services.	L . Unsubstantiated

## Case Summary

On February 27, 2020, L [REDACTED] C [REDACTED] filed this complaint on the behalf of D [REDACTED] B [REDACTED] C [REDACTED] and himself with IAB, generating log #2020-6956. The CCRB received this complaint on March 10, 2020.

On February 25, 2020, at approximately 7:30 PM, in the vicinity of East 94th Street and Clark Street in Brooklyn, Mr. C [REDACTED] sat in his parked blue 2004 BMW 325 with his wife, Ms. B [REDACTED] C [REDACTED]. Mr. C [REDACTED]'s windows were tinted and rolled down. Mr. C [REDACTED] smoked a marijuana cigarette while he talked with his wife. Ms. B [REDACTED] C [REDACTED] did not smoke. At this time, Police Officer S [REDACTED] R [REDACTED], Police Officer Joseph Bautista, Police Officer J [REDACTED] D [REDACTED], Sergeant D [REDACTED] G [REDACTED], Police Officer H [REDACTED] C [REDACTED] and Police Officer B [REDACTED] B [REDACTED] of the 67 Precinct - Intel Crime Section were in a caravan of two unmarked vehicles behind Mr. C [REDACTED]. PO R [REDACTED] approached Mr. C [REDACTED] and Ms. B [REDACTED] C [REDACTED] and the other officers backed him up (**Allegation A and B: Abuse of Authority, exonerated**). PO R [REDACTED] told Mr. C [REDACTED] to, "Get the fuck out of the car" (**Allegation C: Discourtesy, unsubstantiated**). Mr. C [REDACTED] and Mr. B [REDACTED] C [REDACTED] exited their vehicle and the officers confirmed Mr. C [REDACTED]'s identity. Mr. C [REDACTED]'s driver's license was suspended. PO R [REDACTED] and PO Bautista searched Mr. C [REDACTED]'s vehicle (**Allegation D and E: Abuse of Authority, exonerated**) and recovered packaged marijuana and alleged heroin. PO R [REDACTED], SGT G [REDACTED], PO C [REDACTED] and PO B [REDACTED] attempted to restrain Mr. C [REDACTED]'s arms to handcuff him. Mr. C [REDACTED] physically resisted officers. SGT G [REDACTED] told Mr. C [REDACTED] that if he fought the officers, he will be Tased (**Allegation F: Abuse of Authority, substantiated**). The officers placed handcuffs on Mr. C [REDACTED] and Ms. B [REDACTED] C [REDACTED]. The couple and their vehicle were transported to the 67 Precinct station house. PO Bautista drove Mr. C [REDACTED]'s vehicle. (**Allegation G: Abuse of Authority, exonerated**). At the station house, PO R [REDACTED] and PO Bautista conducted an inventory search on Mr. C [REDACTED]'s vehicle and recovered two switchblades (**Allegation H and I: Abuse of Authority, exonerated**). Mr. C [REDACTED] and Ms. B [REDACTED] C [REDACTED] were processed and lodged into holding cells. An unidentified officer escorted Mr. C [REDACTED] to a room. Mr. C [REDACTED] was met by the PO R [REDACTED], PO Bautista, PO D [REDACTED], SGT G [REDACTED], PO C [REDACTED] and PO B [REDACTED]. SGT G [REDACTED] called Mr. C [REDACTED] an "asshole" (**Allegation J: Discourtesy, unsubstantiated**). SGT G [REDACTED] told Mr. C [REDACTED] to provide the police with information regarding firearms in his neighborhood. Mr. C [REDACTED] refused. Mr. C [REDACTED] was brought back to his cell. PO Bautista escorted Ms. B [REDACTED] C [REDACTED] out of her cell and into the room. The same officers were present. PO R [REDACTED] asked Ms. B [REDACTED] C [REDACTED] to provide the police with information regarding firearms in her neighborhood. Ms. B [REDACTED] C [REDACTED] declined. Approximately thirty minutes later, PO Bautista escorted Ms. B [REDACTED] C [REDACTED] back to the room. SGT G [REDACTED] told Ms. B [REDACTED] C [REDACTED] that Mr. C [REDACTED] was "being a fucking asshole" (**Allegation K: Discourtesy, unsubstantiated**). PO R [REDACTED] told Ms. B [REDACTED] C [REDACTED] that her refusal to cooperate could result in officers searching her home and taking her children away. (**Allegation L: Abuse of Authority, unsubstantiated**).

Mr. C [REDACTED] was charged with, criminal possession of narcotics in the third degree, criminal possession of a controlled substance in the fourth degree, criminal possession of a weapon in the third degree and Aggravated unlicensed operation of a motor vehicle in the third degree. Mr. B [REDACTED] C [REDACTED] arrest was voided.

BWC video footage was obtained for this investigation and is attached to IA #65 (Board Review 05).

## Findings and Recommendations

**Allegation (A) Abuse of Authority: Police Officer S [REDACTED] R [REDACTED] stopped I [REDACTED] C [REDACTED]**

**Allegation (B) Abuse of Authority: Police Officer S [REDACTED] R [REDACTED] stopped D [REDACTED] B [REDACTED] C [REDACTED]**

It is undisputed that Mr. C [REDACTED]'s driver's license was suspended. Mr. C [REDACTED] smoked a marijuana cigarette inside his parked vehicle with tinted windows. Mr. C [REDACTED]'s driver side window was rolled down. Mr. C [REDACTED] was in the driver seat and Ms. B [REDACTED] C [REDACTED] was in the front passenger seat. PO R [REDACTED] approached Mr. C [REDACTED] and Ms. B [REDACTED] C [REDACTED] followed by PO Bautista, and PO D [REDACTED] in one vehicle and SGT G [REDACTED] PO C [REDACTED] and PO B [REDACTED] as back up.

According to Mr. C [REDACTED]'s CCRB statement (Board Review 03), approximately two to five minutes after he parked and smoked a marijuana cigarette, an unmarked police vehicle drove up beside him on his driver side. PO R [REDACTED] asked Mr. C [REDACTED] if he was smoking weed. Mr. C [REDACTED] told PO R [REDACTED] yes. PO R [REDACTED] PO Bautista, and PO D [REDACTED] exited their vehicle. Mr. C [REDACTED] put out his marijuana cigarette in the ashtray between the shift stick and locked glovebox. There was a pocketknife inside the glovebox. A second unmarked police vehicle pulled over behind Mr. C [REDACTED] SGT G [REDACTED] PO C [REDACTED] and PO B [REDACTED] exited the second vehicle. The other officers surrounded Mr. C [REDACTED] vehicle. PO R [REDACTED] approached the Mr. C [REDACTED]'s driver side and told Mr. C [REDACTED] "Get the fuck out of the car. Get your ass out of the car."

According to Ms. B [REDACTED] C [REDACTED] (Board Review 04), approximately two minutes after Mr. C [REDACTED] parked, PO R [REDACTED] approached him and asked, "What are you doing?" PO R [REDACTED] asked Mr. C [REDACTED] to show his identification. Mr. C [REDACTED] asked why. PO R [REDACTED] told Mr. C [REDACTED] that he observed him smoking marijuana. Mr. C [REDACTED] denied smoking marijuana. Ms. B [REDACTED] C [REDACTED] stated that neither Mr. C [REDACTED] nor herself was smoking marijuana. Mr. C [REDACTED] provided his ID to PO R [REDACTED] and PO R [REDACTED] told Mr. C [REDACTED] to exit his vehicle. Mr. C [REDACTED] complied.

According to PO R [REDACTED]'s CCRB statement (Board Review 19), PO R [REDACTED] observed Mr. C [REDACTED]'s vehicle with rolled down tinted driver side windows. PO R [REDACTED] smelled an odor of marijuana smoke coming out of Mr. C [REDACTED] vehicle from approximately ten feet away. At this time, PO R [REDACTED] also observed Mr. C [REDACTED] smoking a marijuana cigarette. Ms. B [REDACTED] C [REDACTED] was not smoking. PO R [REDACTED] exited his vehicle and approached Mr. C [REDACTED]'s driver side to conduct a stop. PO R [REDACTED] asked Mr. C [REDACTED] to exit and to step to rear of his vehicle. PO R [REDACTED] stated that he was trained in identifying marijuana at the police academy.

CCRB statements provided PO Bautista (Board Review 20), PO D [REDACTED] (Board Review 9), SGT G [REDACTED] (Board Review 7) were consistent with each other. Each of the officers above stated that they smelled the odor of marijuana smoke coming from Mr. C [REDACTED]'s vehicle and observed him smoking a marijuana cigarette. According to PO C [REDACTED] (Board Review 6) and PO Boskovic's CCRB (Board Review 10) statements, neither officer recalled if they smelled an odor of marijuana coming from Mr. C [REDACTED]'s vehicle. PO B [REDACTED] did not observe Mr. C [REDACTED] smoking a marijuana cigarette while PO C [REDACTED] did not recall. The officers' statements were all consistent in that all the officers stated that they were PO R [REDACTED] back up.

According to NYPD Arrest Evidence Invoice (Board Review 18), prepared by PO R [REDACTED] a marijuana cigarette in a "blunt" package and marijuana in a plastic container was found at the time of Mr. C [REDACTED]'s arrest.

According to PO R [REDACTED]'s BWC video footage (Board Review 06), at internal timestamp 19:40:30,

Mr. C ■ exits his vehicle and PO R ■ instructs Mr. C ■ to go to the rear. The video does not have audio of when PO R ■ provided Mr. C ■ with instructions to exit his vehicle.

According to SGT G ■'s BWC video footage (Board Review 5), at internal timestamp 19:42:30, SGT G ■ tells Mr. C ■ that he cannot smoke marijuana in his vehicle. Mr. C ■ tells SGT G ■ that he can.

According to NY CLS Penal Section 221.05 (Bord Review 12), a person is guilty of unlawful possession of marijuana when he knowingly and unlawfully possesses marihuana.

According to People v Norman, 142 A.D.3d 1107 (2016) (Board Review 26), probable cause existed for the warrantless search of the defendant's vehicle, based on an experienced narcotics officer's detection of the odor of burnt marihuana emanating from the defendant's parked vehicle.

Mr. C ■'s own admission of smoking a marijuana cigarette inside his parked vehicle prior to PO R ■ approach, and PO R ■'s testimony of smelling the odor of marijuana and observing Mr. C ■ smoking a marijuana cigarette inside the vehicle provided officers with probable cause in stopping Mr. C ■ in his parked vehicle, and his passenger Ms. B ■ C ■

Therefore, it is recommended that **Allegations A and B** be closed as *exonerated*.

**Allegation (C) Discourtesy: Police Officer S ■ R ■ spoke discourteously to L ■ C ■**

It is undisputed that PO R ■ instructed Mr. C ■ to exit his vehicle. It remains disputed whether PO R ■ spoke discourteously to Mr. C ■ when issuing instructions for him to exit.

According to Mr. C ■ CCRB statement (Board Review 03), he stated that PO R ■ shined his flashlight at him on approach. When Mr. C ■ asked PO R ■ to turn off his flashlight, PO R ■ responded by telling Mr. C ■ "We got a tough guy. Get the fuck out of the car. Get your ass out of the car."

According to Ms. B ■ C ■ (Board Review 04), she stated that PO R ■ instructed Mr. C ■ to exit his vehicle. Ms. Bitch-C ■ did not state that any profanity was said by PO R ■ or any other officers on scene at this time.

According to PO R ■ CCRB statement (Board Review 19), he did not use profanity when speaking with Mr. C ■ nor did he hear any officers use profanity with Mr. C ■ PO R ■ did not tell Mr. C ■ "Get the fuck out of the vehicle" nor use any other profanity when speaking with him.

According to the CCRB statements provided by PO Bautista (Board Review 20), he did not recall if any officers used profanity when speaking with Mr. C ■ According to PO D ■'s CCRB statement (Board Review 09), PO R ■ instructed Mr. C ■ to exit his vehicle by telling him, "Step out of your vehicle." According to the CCRB statements provided by SGT G ■ (Board Review 7), PO C ■ (Board Review 6), and PO B ■ (Board Review 10), the officers observed PO R ■ speaking with Mr. C ■ on approach, but they did not hear what the conversation was like.

The BWC video footage (Board Review 05) obtained by the investigation did not record audio at the time Mr. C ■ alleged PO R ■ spoke discourteously to him. Because of the discrepant

civilian and officer statements and the lack of additional video-audio evidence, the investigation did not arrive at a preponderance of evidence that PO R████ spoke discourteously to Mr. C████. It is therefore recommended that **Allegations C** be closed as *unsubstantiated*.

**Allegation (D) Abuse of Authority: Police Officer S████ R████ searched the vehicle in which L████ C████ was an occupant.**

**Allegation (E) Abuse of Authority: Police Officer Joseph Bautista searched the vehicle in which L████ C████ was an occupant.**

According to Mr. C████ CCRB statement (Board Review 03), he stated that when he was at the rear of his vehicle with SGT G████ PO C████ and PO B████ PO R████ took his vehicle key from his right hand. Mr. C████ did not state that his vehicle was search on the street by police officers.

According to Ms. B████ C████ CCRB statement (Board Review 04), she stated that when she exited Mr. C████ vehicle, PO R████ and PO Bautista entered and reclined and search Mr. C████ vehicle seats, sunroof, and doors. PO R████ grabbed Mr. C████ vehicle keys from his hand and used it to open a locked glove compartment. Mr. C████ told the officers that they did not have permission to search his vehicle. Ms. B████ C████ did not observe PO R████ nor PO Bautista remove any items from the inside of Mr. C████'s vehicle.

According to PO R████'s CCRB statement (Board Review 19), he and PO Bautista searched Mr. C████ vehicle during the initial stop. PO R████ searched the front seats, rear seats, glove compartment, arm rest, and the floor of the vehicle, while PO Bautista searched the front passenger side. PO R████ found marijuana on Mr. C████'s driver seat arm rest. The glove compartment was locked. PO R████ asked Mr. C████ for his keys to unlock it. PO R████ took the keys from Mr. C████'s keys and found 30 glycine of alleged heroin inside the glove compartment. PO Bautista transported Mr. C████'s vehicle to the 67 Precinct station house by. PO R████ received training in identifying heroin by its color and packaging at the police academy.

According to PO Bautista's CCRB statement (Board Review 20), he searched the left side and back seats of Mr. C████'s vehicle. PO Bautista did not recall if he recovered any items from the vehicle. PO R████ searched the vicinity around the glove and found alleged heroin. PO Bautista searched the vehicle without Mr. C████'s consent because there was an odor of marijuana coming from it.

According to PO D████'s CCRB statement (Board Review 09), he did not recall whether PO R████ PO Bautista or other officers searched Mr. C████'s vehicle at the initial stop. PO D████ stated at the time of the incident, officers had probable cause to search Mr. C████'s vehicle due to the odor of marijuana that it emitted. PO D████ stated that Mr. C████'s vehicle was transported to the 67 Precinct station house to be safeguarded and to have an inventory search conducted

According to SGT G████'s CCRB statement (Board Review 07), he did not know why PO R████ wanted or how PO R████ obtained Mr. C████'s vehicle keys. When Mr. C████'s keys were removed from him, Mr. C████ became irate and called officers derogatory names. PO R████ searched the inner compartments, and the front driver and passenger seats of the vehicle. Mr. C████ told officers that they did not have probable cause to search his vehicle. SGT G████ stated that PO R████ searched Mr. C████ vehicle because there was an odor of marijuana coming from it.

According to PO C████ and PO B████'s CCRB statements (Board Review 06), they did not recall whether any officers on scene searched Mr. C████'s vehicle.

According to PO R■■■■'s BWC video footage (Board Review 05), at internal timestamp 19:41:21, PO R■■■■ searches Mr. C■■■■ driver side door. At internal timestamp 19:41:41, Mr. R■■■■ asks Mr. C■■■■ to let him see his vehicle keys. At 19:41:46 PO R■■■■ opens Mr. C■■■■'s grip and takes the key from him. At internal timestamp 19:44:55, PO R■■■■ searches Mr. C■■■■'s dashboard. There is the sound of compartments opening. PO R■■■■ asks PO Bautista, "What's this? Heroin?" PO R■■■■ removes a purple container from inside Mr. C■■■■'s vehicle.

According to PO Bautista's BWC video footage (Board Review 05), at internal timestamp 19:49:09, PO Bautista searches Mr. C■■■■'s back seat storage. At internal timestamp 19:42:22, PO R■■■■ asks PO Bautista "Heroin?" At internal timestamp, 19:43:29, PO Bautista tells Ms. B■■■■ C■■■■ that he will explain everything to her in the precinct and that there were illegal items in Mr. C■■■■'s vehicle.

According to People v Norman, 142 A.D.3d 1107 (2016) (Board Review 26), probable cause existed for the warrantless search of the defendant's vehicle, based on an experienced narcotics officer's detection of the odor of burnt marijuana emanating from the defendant's parked vehicle.

Mr. C■■■■'s own admission of having smoked a marijuana cigarette inside his parked vehicle with windows down, and corroborating officer statements, it was reasonable that PO R■■■■ and other officers in scene to have smelled the odor marijuana smoke emanating from Mr. C■■■■'s vehicle. Further, PO R■■■■ observed Mr. C■■■■ smoking the marijuana cigarette in plain view. These factors provided officers with probable cause to conduct a search on Mr. C■■■■'s vehicle. Therefore, it is recommended that **Allegation D** and **E** be closed as *exonerated*.

**Allegation (F) Abuse of Authority: Sergeant D■■■■, G■■■■ threatened L■■■■, C■■■■ with the use of force.**

It is undisputed that SGT G■■■■, PO C■■■■ and PO B■■■■ attempted to place handcuffs on Mr. C■■■■ at the rear of his vehicle. Mr. C■■■■ refused to give his arms to officers and SGT G■■■■ told him that if he fought any of the officers, he would get Tased.

According to Mr. C■■■■ CCRB statement (Board Review 03), he did not mention that SGT C■■■■ threatened to use his Taser on him.

According to Ms. B■■■■ C■■■■'s CCRB statement (Board Review 04), she did not mention that SGT G■■■■ threatened the use of his Taser on Mr. C■■■■.

According to SGT G■■■■'s CCRB statement (Board Review 07), PO C■■■■, PO B■■■■ and himself spoke with Mr. C■■■■ at the rear of his vehicle. During the conversation, Mr. C■■■■ made derogatory remarks at him and the officers. When SGT G■■■■, PO C■■■■ and PO B■■■■ attempted to place Mr. C■■■■ in handcuffs, Mr. C■■■■ tensed his body and did not comply with the officers' instructions to put his hands behind his back. SGT G■■■■ did not consider Mr. C■■■■ actions to be resistance. SGT G■■■■ stated that Mr. C■■■■ prior actions led him to believe he was about to resist arrest and fight officers. SGT G■■■■ made his assessment based on experience as a police officer. SGT G■■■■ threatened to use his Taser on Mr. C■■■■ multiple times because Mr. C■■■■ said derogatory words towards himself and officers. SGT G■■■■ issued the threats to warn Mr. C■■■■ his continued refusal to comply with instructions to put his hands behind his back would result in him being Tased.

According to CCRB statements provided by PO R■■■■ (Board Review 19), PO C■■■■ (Board

Review 6), PO Bautista (Board Review 20), and PO D [REDACTED] (Board Review 9), Mr. C [REDACTED] resisted officers by tensing his body and not giving his hands to officers for handcuffing. According to PO B [REDACTED] CCRB statement, he stated Mr. C [REDACTED] did not attempt to fight officers.

According to PO R [REDACTED] BWC video footage (Board Review 05), at internal timestamp 19:42:45, PO B [REDACTED] reaches to hold of Mr. C [REDACTED]’s hands. Mr. C [REDACTED] raises both of his arms in the air. SGT G [REDACTED] holds Mr. C [REDACTED] hands down. PO R [REDACTED] holds Mr. C [REDACTED]’s right arm. Mr. C [REDACTED] continues to raise his arms in the air. SGT G [REDACTED] tells Mr. C [REDACTED] that he would get “Tased” if he fought officers, twice. PO R [REDACTED] holds Mr. C [REDACTED] right arm. Mr. C [REDACTED] pulls his arm away and tells the officers to get off him. At internal timestamp 19:43:03, PO B [REDACTED] handcuffs Mr. C [REDACTED]

According to SGT G [REDACTED]’s BWC video footage (Board Review 05), at internal timestamp, 19:42:46, SGT G [REDACTED] tells Mr. C [REDACTED] "You're gonna get tased. You fight, you gonna get tased. You gonna get tased. Yo, you're gonna get tased", as officers apply handcuffs on Mr. C [REDACTED]

According to NYPD Patrol Guide Section 221-08 (Board Review #6), “Tasers” or Conducted Electrical Weapons (CEW) “can be an effective means of subduing aggressive suspects and emotionally disturbed persons (EDPs)... A CEW should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other person(s) actually present.” The Patrol Guide section further defined active resistance as “physically evasive movements to defeat a member of the service’s attempt at control, including bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody.” Before the deployment of CEWs, officers should consider, “a. The nature and severity of the crime/circumstances, b. Actions taken by the subject, c. Duration of the action, d. Immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders, e. Whether the subject is actively resisting custody, f. Whether the subject is attempting to evade arrest by flight, g. Number of subjects in comparison to the number of MOS, h. Size, age, and condition of the subject in comparison to the MOS, i. Subject’s violent history, if known.”

The BWC video footage (Board Review 05) captured Mr. C [REDACTED] uncompliant with officers’ commands for him to stand still and to put his hands behind his back. When PO R [REDACTED] SGT G [REDACTED] PO C [REDACTED] and PO B [REDACTED] held Mr. C [REDACTED] arm, Mr. C [REDACTED] active resisted officers by yelling, tensing his body and refusing to give his hands to officers for handcuffing. However, Mr. C [REDACTED] did not at any time attempt to evade officers by flight. Moreover, considering the ratio of officers on scene to Mr. C [REDACTED] the officers outnumbered Mr. C [REDACTED] six to one. Mr. C [REDACTED] did not cause an immediacy of perceived threat of safety to officers or bystanders and officers were able to swiftly apply handcuffs on Mr. C [REDACTED] SGT G [REDACTED]’s threat to deploy his Taser on Mr. C [REDACTED] was inappropriate given the above and did not help deescalate an increasingly emotional charged situation. At the time SGT G [REDACTED] threatened Mr. C [REDACTED] officers had already physically restrained Mr. C [REDACTED] with minimal effort. The investigation determined that SGT G [REDACTED] should not have verbally threatened to use a Taser on Mr. C [REDACTED] Therefore, **Allegation F** should be closed as *substantiated*.

**Allegation (G) Abuse of Authority: Police Officer Joseph Bautista seized L [REDACTED] C [REDACTED] property.**

**Allegation (H): Abuse of Authority: Police Officer S [REDACTED] R [REDACTED] searched the vehicle in which L [REDACTED] C [REDACTED] was an occupant.**

**Allegation (I): Abuse of Authority: Police Officer Joseph Bautista searched the vehicle in which L [REDACTED] C [REDACTED] was an occupant.**

It is undisputed that Mr. C■■■■'s driver's license was suspended and that his vehicle was transported back to the 67 Precinct station house by PO Bautista, where an inventory search was conducted by PO Bautista and PO R■■■■.

According to Mr. C■■■■ CCRB statement, he stated that after he was handcuffed, PO Bautista entered his vehicle and drove it away. Mr. C■■■■'s vehicle was returned to him following his release on February 26, 2020. Mr. C■■■■ observed damages to his sunroof panel, radio system, and rearview camera.

According to Ms. B■■■■ C■■■■'s CCRB statement, she did not mention that officers drove Mr. C■■■■ vehicle away or that a second search was conducted.

According to PO R■■■■ (Board Review 19), after checking Mr. C■■■■ identifying documents, it was discovered that Mr. C■■■■ driver's license was suspended.

PO Bautista (Board Review 20) and PO D■■■■'s (Board Review 9) CCRB statements corroborated with PO R■■■■. Mr. C■■■■ vehicle was transported back to the 67 station house and an inventory searched was conducted by PO R■■■■ and PO Bautista. PO Bautista searched the front passenger side and knives was recovered. PO Bautista did not recall who and where the knives was found. PO Bautista did not recall if he retrieved any items from the front passenger side.

According to PO Bautista's BWC video footage (Board Review 05), at internal timestamp 19:50:44, PO R■■■■ enters Mr. C■■■■'s vehicle and drives off.

According to PO R■■■■ BWC video footage (Board Review 05), at internal timestamp 20:19:49, PO C■■■■ searches the driver section of Mr. C■■■■'s vehicle. PO R■■■■ pats the front driver seat area. At internal timestamp 20:20:17, PO R■■■■ recovers a switch blade inside Mr. C■■■■ glove box. At internal timestamp 20:22:00, PO R■■■■ searches the back passenger seat area. At internal timestamp 20:22:35, PO R■■■■ finds a second switch blade from the back passenger seat area. At internal timestamp 20:24:08, PO R■■■■ slides the back passenger seat forward and looks behind it. At internal timestamp 20:25:30, PO R■■■■ searches the inside of the hood.

According to PO Bautista's second BWC video footage (Board Review 5), at internal timestamp 20:19:15, PO Bautista lifts the floor mat under the front passenger seat, searches the front passenger door storage compartment, and the plastic bag on the front passenger seat. At internal timestamp 20:20:50, PO Bautista and PO R■■■■ searches the dashboard compartment. At internal timestamp 20:25:00, PO Bautista opens the hood and searches it.

According to Mr. C■■■■'s Arrest Report, #K20608611-R (Board Review 25), charge number four, Mr. C■■■■ violated Vehicle Traffic Law Section 511, aggravated unlicensed operation of a motor vehicle in the third degree.

According to Mr. C■■■■'s NYPD Property Vouchers (Board Review 18), PO R■■■■ and PO Bautista retrieved and vouched alleged heroin, marijuana, and a switch blade knife, and other various personal items found during the inventory search of Mr. C■■■■'s vehicle at the station house.

According to People v. Francis, 12 Misc. 3d 781 (2006) (Board Review 22), the court ruled that a vehicle that is lawfully in police custody is subject to a routine inventory search to catalogue its contents. The lawful arrest of the vehicle's driver by itself does not justify impoundment. A car may be impounded if it was driven by an unlicensed driver or a driver whose license is suspended



and there is no one who is legally able to drive the vehicle.

According to NYPD Patrol Guide Procedure 218-13 (Board Review 23), officers must thoroughly search the interior of any vehicle that comes into police custody. Officers are permitted to search the interior of the vehicle thoroughly. a. This search should include any area that may contain valuables including, but not limited to: (1) Glove compartment (2) Console (3) Map pockets in or on doors and rear or side of seats (4) Areas under the seats and in and around the seat stuffing and springs (5) Under the floor mats (6) Under and behind the dashboard (7) Inside the ashtrays (8) In the air vents where accessible (9) Under the hood (10) Trunk.

The investigation determined that PO Bautista was justified in taking Mr. C [REDACTED]'s vehicle into custody because Mr. C [REDACTED]'s driver's license was suspended at the time of the incident. Given that both, Mr. C [REDACTED] and Ms. B [REDACTED] C [REDACTED] were arrested, the officers were justified in impounding Mr. C [REDACTED]'s vehicle for safeguarding because there was no driver legally able to operate the vehicle on Mr. C [REDACTED]'s behalf. In accordance with the NYPD Patrol guide, once Mr. C [REDACTED]'s vehicle was in police custody, the PO R [REDACTED] and PO Bautista were required to conduct a thorough inventory search.

Therefore, it is recommended that **Allegations G, H, and I** be closed as *exonerated*.

**Allegation (J) Discourtesy: Sergeant D [REDACTED] G [REDACTED] spoke discourteously to L [REDACTED] C [REDACTED].**

**Allegation (K) Discourtesy: Sergeant D [REDACTED] G [REDACTED] spoke discourteously to D [REDACTED] B [REDACTED] C [REDACTED].**

**Allegation (L) Abuse of Authority: Police Officer S [REDACTED] R [REDACTED] threatened to notify Administration for Children's Services.**

It remains disputed whether officers interacted with Mr. C [REDACTED] and Ms. B [REDACTED] C [REDACTED] once they were lodged in the holding cells.

According to Mr. C [REDACTED] CCRB's statement (Board Review 03), an unidentified officer entered the holding cell area and escorted her to the back of the stationhouse. The officer escorted him to a room on the right side of the hallway. PO R [REDACTED] PO Bautista, PO D [REDACTED] SGT G [REDACTED] PO C [REDACTED] and PO B [REDACTED] were inside. SGT G [REDACTED] instructed Mr. C [REDACTED] to sit on a chair. Mr. C [REDACTED] refused. SGT G [REDACTED] called Mr. C [REDACTED] an "asshole". The officers asked Mr. C [REDACTED] to provide them with information regarding individuals with guns in his neighborhood. Mr. C [REDACTED] refused. The officers told Mr. C [REDACTED] that if he did cooperate, they would lose Mr. Chery's paperwork and search his home.

According to Ms. B [REDACTED] C [REDACTED] CCRB statement (Board Review 04), she stated that approximately twenty to thirty minutes after she was lodged in a cell, PO Bautista escorted her to a room. PO R [REDACTED] PO Bautista, PO D [REDACTED] SGT G [REDACTED] PO C [REDACTED] and PO B [REDACTED] were inside the room. The officers identified themselves as the "The Gun Control Unit". The officers ask Ms. B [REDACTED] C [REDACTED] to provide the police with information regarding individuals with firearms in her neighborhood. Ms. B [REDACTED] C [REDACTED] told the officers that she did not have any information. PO R [REDACTED] told Ms. B [REDACTED] C [REDACTED] that she will be rewarded \$1500 if she provided the requested information. Ms. B [REDACTED] C [REDACTED] declined. PO Bautista escorted Ms. B [REDACTED] C [REDACTED] back to her cell. Thirty minutes later, PO Bautista escorted Ms. B [REDACTED] C [REDACTED] back to the room. SGT G [REDACTED] told Ms. B [REDACTED] C [REDACTED] that Mr. C [REDACTED] was "Being a fucking asshole." PO R [REDACTED] told Ms. B [REDACTED] C [REDACTED] that the police will get a search warrant to search her home because she did not cooperate and that her children could get taken away. Ms. B [REDACTED] C [REDACTED] was escorted back to her cell.

According to SGT G■■■■'s CCRB statement (Board Review 07), PO R■■■■ processed Mr. C■■■■ and Ms. B■■■■C■■■■ at the station house. SGT G■■■■ did not know if Mr. C■■■■ and Ms. B■■■■C■■■■ were taken out of the cells at any time. SGT G■■■■ did not recall if he had additional contact with Mr. Chery and Ms. B■■■■C■■■■ after they were lodged inside of the holding cells. SGT G■■■■ denied that he or other officers questioned Mr. C■■■■ and Mrs. B■■■■C■■■■ about individuals in their neighborhood with firearms. SGT G■■■■ stated that neither he nor other officers called Mr. C■■■■ an "asshole". SGT G■■■■ stated that neither he or any other officers threatened to search Ms. B■■■■C■■■■' home or take her kids away from her.

According to CCRB statements provided by PO R■■■■ (Board Review 19), and PO Bautista (Board Review 20), they did not recall either themselves or any officer removing Mr. C■■■■ and Ms. B■■■■C■■■■ from their cells at any time. PO R■■■■ did not recall questioning Ms. B■■■■C■■■■ regarding individuals with firearms and or threatening to search her home and take her children away. According to PO B■■■■ (Board Review 10), PO C■■■■ (Board Review 6) and PO D■■■■'s (Board Review 9) CCRB statements, they did not have further interaction either Mr. C■■■■ or Ms. B■■■■C■■■■ after they were lodged in the cells. The officers did not know if any officers escorted Mr. C■■■■ or Ms. B■■■■C■■■■ out of the holding cell area for questioning.

According to the 67 Precinct Prisoner Holding Pen Roster for Tour 3 (Board Review 08), PO R■■■■ was the cell attendant for Mr. C■■■■ and Ms. B■■■■C■■■■

Based on the above discrepancies, the lack of additional testimonies, and audio and video evidence, the investigation could not determine whether SGT G■■■■ spoke discourtesy to Mr. C■■■■ and Ms. B■■■■C■■■■ nor can the investigation determine if PO R■■■■ threatened to call the NYC Administration for Children Services (ACS) and remove Ms. B■■■■C■■■■ children from her. Therefore, **Allegation J, K and L** should be closed as *unsubstantiated*.

### **Civilian and Officer CCRB Histories**

- Mr. C■■■■ has been party to two CCRB complaints and has been named as a victim in twenty-four allegations (Board Review #3).
- #202002745 involved an allegation of Force, Abuse of authority and Discourtesy. To date, this investigation is still open.
- This is the only complaint Ms. B■■■■C■■■■ had been a party of.
- PO R■■■■ has been a member of service for eight years and has been a subject in nine CCRB complaints and thirty-eight allegations, none of which were substantiated.
- PO R■■■■'s CCRB history does not reflect any apparent pattern pertinent to this investigation.
- PO Bautista has been a member of service for eight years and has been a subject in nine CCRB complaints and twenty-eight allegations, none of which were substantiated.
- PO Bautista's CCRB history does not reflect any apparent pattern pertinent to this investigation.
- SGT G■■■■ has been a member of service for 15 years and has been named a subject in forty-four CCRB complaints and one hundred twenty-two other allegations, of which twelve have been substantiated.
- #201111996 involved a substantiated Abuse of Authority: Premises entered and/or searched allegation against SGT G■■■■. The Board recommended Command Discipline. The NYPD imposed Instructions.

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